

**STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter of the Application of )  
DTE ELECTRIC COMPANY for authority )  
to increase its rates, amend its rate )  
schedules and rules governing the )  
distribution and supply of electric )  
energy, and for miscellaneous )  
accounting authority.)

Case No. U-21534

**INITIAL BRIEF OF  
WALMART INC.**

October 3, 2024

**I. THE COMMISSION SHOULD CONSIDER THE CUSTOMER IMPACT OF THE COMPANY’S REQUESTED REVENUE REQUIREMENT AND ROE TO ENSURE THAT ANY INCREASE IN THE COMPANY’S RATES REFLECTS THE MINIMUM AMOUNT NECESSARY TO PROVIDE ADEQUATE AND RELIABLE SERVICE, WHILE ALSO PROVIDING AN OPPORTUNITY TO EARN A REASONABLE RETURN.**

Walmart has approximately 40 retail stores and related facilities in DTE Electric Company’s service territory. Most of these facilities are served on the Company’s Rate Schedule No. 11 – Primary Supply Rate (“D11”). About 71 percent of Walmart’s load is served by a third-party competitive supplier and the remainder takes generation service from DTE. (Perry, 6 TR 4722).

The Company proposes a revenue requirement increase of approximately \$456.4 million for the January 1, 2025 through December 31, 2025 projected test year. (Application at p. 2, ¶ 4. *See also* Foley, 2 TR 89).

Electricity is a significant operating cost for retailers such as Walmart. When electric rates increase, the increased cost to retailers can put pressure on consumer prices and other expenses required by a business to operate. The Commission should thoroughly and carefully consider the customer impact in examining the requested revenue requirement and ROE, in addition to all other facets of this case, to ensure that any increase in the Company's rates is the minimum amount necessary to provide safe, adequate, and reliable service, while also providing DTE with the opportunity to recover its reasonable and prudent costs and earn a reasonable return on its investment. (Perry, 6 TR 4723).

**A. The Company’s rate case filing demonstrates that the proposed ROE is excessive.**

DTE proposes an ROE of 10.50 percent, based on a range of 10.25 percent to 11.00 percent. (Villadsen, 6 TR 2406-07). Based on a capital structure of 50.0 percent equity, the proposed ROE results in an overall rate of return of 5.92 percent on an after-tax basis and a pre-tax rate of return

equal to 7.37 percent. (Application at p. 4, ¶ 14; Exhibit A-14, Schedule D-1, p. 1). The proposed ROE of 10.50 percent is 60 basis points higher than the ROE of 9.90 percent approved by the Commission on December 1, 2023. (Perry, 6 TR 4726).

**1. The Company’s proposed ROE will have an adverse customer impact.**

Using the Company’s proposed rate base, cost of debt, and capital structure, the impact of the proposed changes in authorized ROE alone is approximately \$70.4 million, or 15.4 percent of the proposed revenue deficiency. (Perry, 6 TR 4728; Exhibit WAL-2).

Other states have recognized the importance of considering ratepayer impacts in the ROE evaluation process. *See, e.g., State ex rel Utils. Comm’n v. Cooper*, 366 N.C. 484, 739 S.E.2d 541, 547 (2013) (“customer interests cannot be measured only indirectly or treated as mere afterthoughts”). The Commission should follow the lead of those other states by considering impacts on ratepayers when determining the proper ROE for a public utility.

**2. Michigan’s regulatory framework contains risk-reducing mechanisms which require the Commission to take a conservative approach to the Company’s proposed ROE.**

The Commission has previously recognized that Michigan’s statutory framework contains several mechanisms, including the use of projected test year revenues, expenses and sales volumes to support requested rate increases, which significantly reduce the risk borne by utilities such as the Company. (Perry, 6 TR 4728). As a result, the Commission must take a conservative approach when awarding a specific ROE. *See Order*, Case Nos. U-16472 and U-16489, October 20, 2011, page 39 (citing Proposal for Decision, Case Nos. U-16742 and U-16489, August 12, 2011, page 49).

The Commission should continue to recognize the effect of Michigan’s regulatory framework on utility risk. In addition to those characteristics outlined in its Order in Case Nos. U-16472 and U-16489, the Commission should also consider the risk-reducing impact of including CWIP in rate base and, as discussed *infra*, the IRM in its current form and, if approved, the proposed extension and expansion of the IRM, when setting the approved ROE in this case. (Perry, 6 TR 4729).

**3. The Company’s proposed ROE of 10.50 percent is significantly higher than the average ROE awarded by this and other utility regulatory commissions.**

The Company’s requested ROE of 10.50 percent exceeds the average ROE authorized by other utility regulatory commissions to investor-owned utilities since 2021. According to data from S&P Global Market Intelligence (“S&P Global”), a financial news and reporting company, the average of the 123 reported electric utility rate case ROEs authorized by commissions to investor-owned utilities since 2021 is 9.51 percent. The range of reported authorized ROEs for the same period is 7.36 percent to 11.45 percent, and the median authorized ROE is 9.50 percent. (Perry, 6 TR 4730-31; Exhibit WAL-3). The average and median values are significantly below the Company’s proposed ROE of 10.50 percent. As such, the Company’s proposed 10.50 percent ROE not only significantly exceeds the national average and median ROEs authorized over the last three years, but it is counter to broader electric industry trends. (Perry, 6 TR 4731).

The discrepancy between the ROE requested by the Company and industry norms is even more striking when vertically integrated utilities are considered. In the group reported by S&P Global, the average ROE authorized for vertically integrated utilities over the same time frame ranged from a low of 9.54 percent in 2021 to a high of 9.75 percent during the first six months of 2024. The average ROE authorized for vertically integrated utilities during this period was 9.62 percent. (Perry, 6 TR 4732). If approved by the Commission, the Company’s proposed 10.50

percent ROE would be tied for the third highest approved ROE for a vertically integrated utility from 2021 to present. (Perry, 6 TR 4731; Exhibit WAL-3).

Significantly, the difference in the revenue requirement between the Company's proposed 10.50 percent ROE and the average 9.62 percent ROE awarded by other regulatory agencies for vertically integrated utilities is approximately \$103.2 million, or 22.6 percent of the Company's proposed revenue requirement increase. (Perry, 6 TR 4733; Exhibit WAL-4).

The proposed ROE is excessive even when considered on a local basis. Although the Commission tends to award higher authorized ROEs than those awarded in other states, the Company's proposed ROE in this case is higher than any of the ROEs approved by the Commission since 2021. In 2021, the Commission approved a ROE of 9.90 percent for Consumers Energy Co. in Case No. U-20963. In 2022, the Commission approved a ROE of 9.90 percent for the Company in Case No. U-20836, the Company's last rate case. In 2023, the Commission approved ROEs of 9.90 percent for Consumers Energy Co. in Case No. U-21224 and Upper Peninsula Power Co. in Case No. U-21286. To date in 2024, the Commission has approved a ROE of 9.90 percent for Consumers Energy Co. in Case No. U-21389 and a ROE of 9.86 percent for Indiana Michigan Power Co. in Case No. U-21461. (Perry, 6 TR 4729-30). The average approved ROE awarded by the Commission in the seven dockets in which the Commission has issued orders since 2021 was 9.89 percent. (Perry, 4 TR 4729). Thus, it is clear the 10.50 percent ROE requested by the Company is contrary to recent Commission decisions on ROE.

Walmart's concern about the disparity between the Company's proposed ROE and the average ROEs awarded by this and other utility regulatory commissions over the past several years illustrates a national customer's perspective on industry trends in authorized ROE, which has a demonstrable effect on revenue requirement and the resultant burden on customers. (Perry, 6 TR 4733). This disparity should motivate the Commission to carefully examine the Company's

proposed revenue requirement increase and the associated ROE and consider the impact of the authorized ROE on existing and prospective customers as well as the Company's ability to access capital and earn a fair return.

**II. THE COMMISSION SHOULD CONSIDER WHETHER DTE'S REQUESTED EXTENSION AND EXPANSION OF THE IRM IS NECESSARY TO ENSURE RELIABILITY OR WHETHER SUCH COSTS SHOULD BE RECOVERED THROUGH BASE RATES TO CONSIDER ALL COSTS, BENEFITS AND RISKS IN A COMPREHENSIVE MANNER.**

**A. The Commission should deny recovery of any costs exceeding those that were approved in the Company's last rate case for IRM plan years 2024 and 2025, requiring the Company to recover these additional costs through base rates instead.**

The Company originally requested approval of a distribution IRM in its last rate case as a mechanism to recover costs related to five programs characterized as investments in the Company's distribution system. These programs include (i) circuit conversions, (ii) sub-transmission redesign and rebuild, (iii) breaker replacement, (iv) underground residential distribution replacement, and (v) 4.8 kV circuit automation over three planning years spanning from 2024 to 2026. (Foley, 2\_ TR 113-14). While the Commission recognized the value in the Company's proposed IRM, it ultimately approved the mechanism with certain limitations and restricted it to plan years 2024 and 2025. *In the matter of the application of DTE ELECTRIC COMPANY for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority*, Michigan Public Service Commission Case No. U-21297, Order issued December 1, 2023 ("2023 Final Order"), p. 289.

In this case, the Company is seeking authorization to extend the IRM to cover two additional plan years – 2026 and 2027. (Foley, 2 TR 118). The proposed investment levels for these years is \$530.0 million and \$720.0 million, respectively. (Foley, 2 TR 119). The Company also seeks to recover additional costs not currently authorized in the IRM, including:

- (1) An increase in the capital investment currently approved for the 2025 plan year by the following: (i) \$125.6 million for distribution automation; (ii) \$121.0 million for Pole and Pole Top Maintenance & Modernization (PTMM) Program; (iii) \$125.0 million for 4.8 kV hardening; and (iv) \$62.5 million for the frequent outage program (CEMI) (Foley, 2 TR 127-28);
- (2) 2023 costs associated with the Breaker Replacement Program and URD Replacement Program, which are currently approved for recovery through the IRM, but not for 2023 costs (Elliott Andahazy, 4 TR 909);
- (3) The recovery of \$150 million in 2026 and \$200 million in 2027 through an additional capital program, the Pole and Pole Top Maintenance & Modernization (PTMM) Program (Elliott Andahazy, 4 TR 910);
- (4) Expansion of the scope of the currently approved “4.8 kV Circuit Automation” to include broader “Distribution Automation” (Hartwick, 4 TR 634); and
- (5) As part of Distribution Automation, an additional \$21.2 million and \$125.6 million for the currently approved 2024 and 2025 IRM plan years, respectively, which the Company describes as incremental investment supporting wholly different work. ((Hartwick, 4 TR 634).

The Company claims the additional two year extension is needed to ensure the “continued and efficient operation” of the IRM until two other cases, Case No. U-21400 (addressing performance based ratemaking) and Case No. U-21305 (addressing a distribution system audit) have concluded. (Foley, 2 TR 120). The Company seems to anticipate that future iterations of the IRM may incorporate the outcomes of these cases. (Foley, 2 TR 121). According to Company

witness Elliott Andahazy, the Company considered three screening criteria for programs added to the IRM: (i) critical to customer safety, reliability, and/or resiliency, (ii) sufficient size and duration, and (iii) well-understood scope. Based upon these criteria, the company justifies including the additional capital investments and programs discussed above. (Elliott Andahazy, 4 TR 910).

As a retailer that supplies communities with essential goods for everyday living and restoration efforts following major weather events, Walmart understands the importance of resiliency and reliability. Walmart appreciates the Company's investments in its distribution system to support these efforts. However, such investments are traditionally recovered through base rates, allowing all costs, benefits, and risks—including those related to capital investments in the distribution system and those connected to the Company's overall business—to be systematically considered. Walmart acknowledges that the Commission, as stated in its 2023 Final Order, found some value in the IRM. However, based on its experience, Walmart is concerned that these types of recovery mechanisms can expand beyond their original intent and usefulness through a utility's efforts to continuously extend and broaden the scope of such mechanisms, as is the case here. (Perry, 6 TR 4739-40). For this reason, the Commission should deny recovery of any costs exceeding those that were approved in the Company's last rate case for IRM plan years 2024 and 2025, requiring the Company to recover these additional costs through base rates instead. (Perry, 6 TR 4740).

**B. If the Commission approves extending the IRM, it should also require the Company to file a base rate case at the earliest possible date when the assets can be included in the Company's test year.**

The Commission should consider whether increasing the scope of the IRM to include ever-increasing costs through a rider is necessary to ensure reliability, or whether such costs should be recovered through base rates as has historically occurred so that all costs, benefits, and risks comprehensively. (Perry, 6 TR 4740). If, however, the Commission approves extending the IRM in this case, it should also require the Company to file a base rate case at the earliest possible date when the assets can be included in the Company's test year.

**III. The Commission should either remove the two-year limitation from Rate Schedule D3 or require the Company to collaborate with interested parties to develop a public EV charging-specific rate that is informed by data from the alternative COSS presented in this case as well as future data, and require the Company to seek approval of such rate in its next general rate case.**

As part of the Company's last rate case, the Commission authorized customers under Rate Schedules D4, D6.2, D8, D11, and D12 to apply Rate Schedule D3, which is an energy-only rate, for newly installed, separately metered EV charging stations for two years. 2023 Final Order, p. 341 (limiting this rate for existing stations until June 1, 2026). (2023 Final Order, p. 341 (limiting this rate for existing stations until June 1, 2026). Additionally, the Commission required the Company to conduct an alternative COSS to present in this case, incorporating DCFC as a separate class, and to design a rate applicable to this class. *Id.* at 342.

Based on the results of this alternative COSS, the Company created a secondary voltage EV fast charger rate with time-of-use power supply pricing that varies by time period and season. (Willis, 6 TR 2603). The company is not recommending approval of this EV fast charger rate for third party owned DCFCs, however. Due to the small sample size of 21 DCFCs and the exclusion of some chargers in the Company's service territory, the Company is proposing the EV fast charger

rate as an initial step for further discussions on developing an EV-specific rate. (Willis, 6 TR 2605).

Consistent with its position in the Company's prior rate case, Walmart supports allowing customers under Rate Schedules D4, D6.2, D8, D11, and D12 to apply Rate Schedule D3 to their separately metered DCFCs. Walmart also understands the Commission's requirement for the Company to provide an alternative COSS to better assess the impact of DCFCs on the Company's system. Walmart acknowledges that the current data used in the alternative COSS presented in this case is limited and may be more appropriate for future discussions rather than supporting a separate EV charging-specific tariff at this time. However, Walmart is concerned that limiting the application of Rate Schedule D3 to only two years, without a replacement EV charging rate, could deter companies from investing in public EV chargers within the Company's service territory due to the economic uncertainty created by rate instability. (Perry, 6 TR 4741-42).

Walmart recommends that the Commission either remove the two-year limitation from Rate Schedule D3 or require the Company to collaborate with interested parties to develop a public EV charging-specific rate that is informed by data from the alternative COSS presented in this case, as well as future data, and require the Company to seek approval of such rate in its next general rate case.

## **CONCLUSION**

The Commission should carefully evaluate the Company's requested revenue requirement and the associated ROE, giving special consideration to the risk-reducing mechanisms inherent in Michigan's regulatory framework and Commission precedent, including the (i) use of a projected test year (which reduces the risk due to regulatory lag based on the inclusion of the most current information in its rates when they will be in effect), (ii) inclusion of CWIP in rate base, and (iii)

the proposed expansion and extension of the IRM, if approved, as well as the adverse customer impact that will result from the excessive ROE proposed by the Company. Such considerations are necessary to ensure that any increase in rates is the minimum amount necessary to provide adequate and reliable service while also providing adequate access to capital and an opportunity to earn a reasonable return for its shareholders.

The Commission should evaluate whether increasing the scope of the Company's IRM to include ever-increasing costs through a rider is necessary for ensuring reliability, or whether such costs should be recovered through base rates, as has historically occurred, so all costs, benefits, and risks can be evaluated in a comprehensive manner. Additionally, the Commission should deny recovery of any costs exceeding those approved in the Company's last rate case for IRM plan years 2024 and 2025, requiring the Company to recover these additional costs through base rates instead. If, however, the Commission approves extending the IRM, it should also require the Company to file a base rate case at the earliest possible date when the assets can be included in the Company's test year.

Finally, Walmart recommends that the Commission either remove the two-year limitation from Rate Schedule D3 or require the Company to collaborate with interested parties to develop a public EV charging-specific rate that is informed by data from the alternative COSS presented in this case as well as future data, and require the Company to seek approval of such rate in its next general rate case.

*Signature on following page*

Respectfully submitted,

WALMART INC.

*/s/ Melissa M. Horne*

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Dated: October 3, 2024

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF DTE )  
ELECTRIC COMPANY FOR AUTHORITY TO )  
INCREASE ITS RATES, AMEND ITS RATE ) CASE NO. U-21534  
SCHEDULES AND RULES GOVERNING THE ) (Paperless e-file) ALJ  
DISTRIBUTION AND SUPPLY OF ELECTRIC ) Hon. Sally L. Wallace  
ENERGY, AND FOR MISCELLANEOUS )  
ACCOUNTING AUTHORITY )

**PROOF OF SERVICE**

STATE OF RHODE ISLAND COUNTY  
OF PROVIDENCE

Melissa M. Horne, being first duly sworn, deposes and affirms that on the 3<sup>rd</sup> day of October 2024, a true and correct copy of the foregoing instrument was served via electronic mail to the persons shown in the attached service list.

Very truly yours,

/s/ Melissa M. Horne

Melissa M. Horne

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